defendants' counsel, except for the following:—

(1) Purchase of fruits, Brand's essence of chicken, jinseng herbs, etc. for the plaintiff.

(2) The air passage from Kuala Lumpur to London and back and expenses incurred there.

(3) The cost of a new artificial limb.

(1) The general principle is that the plaintiff must be prepared to prove his special damages unless it has been agreed. It is not enough for him to write down the particulars and leave them for the court to decide. It is for him to prove them. (See *Sum Kum* v. *Devaki Nair & Anor.*,[9] and *Khoo See Moi* v. *Tay Teik Chang*[10]). No doubt, the plaintiff gave evidence that he had purchased the extra nourishing food when he was in the hospital, but in the absence of medical evidence that they were necessary in the light of hospital food and nourishment prescribed, I am not prepared in the circumstances to allow the claim on the three items.

(2) In regard to (2), the question is whether the trip to London was indeed necessary when it is known that there are adequate medical facilities in this country to deal with the matter. The plaintiff said he went to Roehampton on medical advice but no proof was available to substantiate it. In the absence of any medical evidence that local facilities are not available or, if available, are inferior to those in Roehampton, and if so whether the London trip was necessary, instead of ordering it for application here, I am not prepared to allow the plaintiff's claim on the two items.

(3) There is medical evidence (Ex. P3B) that it is customary for an amputee to have a spare artificial limb in case of emergency repair or adjustments required on the one in use. I would therefore allow the claim on this item in view of Ex. P2B.

The total award for special damages in the circumstances amounts to $3,392.

I therefore give judgment for the plaintiff as follows:—

(1)	General damages:—	
	(a) Pain and suffering and loss of amenities.	$32,500.00
	(b) Loss of future earnings including future cost of artificial limb.	43,749.00
		76,249.00
(2)	Special damages, with interest as prayed.	3,392.00
	Total:	$79,641.00

(3) Costs of the suit.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Lovelace & Hastings.*

SINO-MALAY HARDWARE CO. SDN. BHD. v. LIM HUNG FURNITURE CO. & ANOR.

[F.C. (Ong C.J. Gill and Ong Hock Sim F.JJ.) March 2, 1973]

[Kuala Lumpur — Federal Court Civil Appeal No. 37 of 1972]

Practice and Procedure — Garnishment — Notice of garnishment — Order for payment into court — Realization of assets — Distribution of assets — Date of realization — R.S.C. 1957, O. 46A r. 1.

In this case three garnishment notices had been issued on October 22, 1971, November 3, 1971 and January 20, 1972 respectively. The appellant sent a certified copy of his notice of garnishment to the sheriff on February 7, 1972. The sheriff had taken out a garnishment summons and the registrar on November 25, 1971 had made an order requiring the garnishee to pay the money into court on or before February 26, 1972. The money was duly paid into court on that date. The registrar took the view that the appellant was not entitled to share in the distribution of the money as he had not given a written notice of garnishment prior to the date of the order requiring payment into court. The appellant appealed.

Held, allowing the appeal: the realization of the assets in this case occurred on the date of the payment of the money into court and therefore the appellant who had lodged his claim before that date was entitled to a rateable distribution.

Cases referred to:

(1) *Seow Ah Fong* v. *Low Hong* (1931) 6 F.M.S.L.R. 188.

(2) *Ramanathan Chettiar* v. *Subramania Sastrial* (1903) I.L.R. 26 Madras 179.

(3) *Sorabji Edulji Warden* v. *Govind Ranji F.N. Wadia and another* (1892) I.L.R. 16 Bom. 91, 97.

(4) *In re Oxford Benefit Building and Investment Society* (1887) 35 Ch. D. 502.

FEDERAL COURT.

K. L. Devaser for the appellants.

Ong Boo Kok for the first respondent

Liew Shou Kong for the second respondent.

Gill F.J.: This is an appeal from an order of the Senior Assistant Registrar of the High Court at Kuala Lumpur rejecting the claim under Order 46A of the Rules of the Supreme Court, 1957 by the appellant, as judgment creditor of Sharikat Pembenaan Sinar Matahari, to rateable distribution of the sum of $7,500 paid into court pursuant to a notice of garnishment issued by the first respondent, as another judgment creditor of the said Sharikat, against one Madam Ong Poh Ling from whom that sum of money was due to the Sharikat (hereinafter referred to as the "judgment debtor"). The appellant as well as the second respondent as judgment creditors of the judgment debtor had also issued similar notices of garnishment against Madam Ong.

As regards the relevant provisions of Order 46A, sub-rule (1) of rule 1 says:

"where assets are realised by sale or otherwise in execution of an order or judgment and more persons than one have, prior to the realisation, attached the property from which such assets have been realised in execution of orders or judgments for the payment of money against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of the realisation, shall be distributed rateably among all such persons".

There are four provisos to this sub-rule. Provisos (a) and (b) clearly do not apply to the facts of this case.

Proviso (c), to my mind, is also inapplicable, although counsel for the second respondents sought to rely on it in support of the order of the Registrar. Proviso (d) reads as follows: —

"where the property from which such assets have been realised has prior to realisation been attached by the Supreme Court and also by one or more of the Subordinate Courts, no holder of a decree passed by a Subordinate Court shall be entitled to share in the distribution of such assets unless he shall prior to realisation have given notice in writing to the Registrar of the attachment at his instance of such property by such Subordinate Court."

The garnishment notice at the instance of the first respondent was issued by the High Court on October 22, 1971. The other two notices of garnishment on the applications of the second respondent and the appellant were issued by the Special Sessions Court at Kuala Lumpur on November 3, 1971 and January 20, 1972 respectively. As required by rule 2(1) of Order 46A, the second respondent sent a certified copy of his notice of garnishment to the Sheriff of the High Court on November 13, 1971. Similarly, the appellant sent a certified copy of his notice of garnishment to the Sheriff on February 7, 1972.

Under rule 3 of Order 46A, it was for the High Court to realise the money which had been garnished and then to determine any claim thereto. As a step in such realisation, the Registrar on November 25, 1971 made an order, on a garnishment summons taken out by the Sheriff, requiring Madam Ong, the garnishee, to pay the money into court on or before February 26, 1972. The money was duly paid into court on that date.

In determining the claims to the money realised, the Registrar took the view that the appellant was not entitled to share in the distribution of the money as he had not given a written notice of his garnishment prior to the date of the order requiring payment into court. In other words, he took the date of the order as the date of realisation, even though the money was not paid into court until two months after the date of that order. For this he relied on the case of *Seow Ah Fong* v. *Low Hong*.[1] That was a case in which the plaintiffs attached the defendant's land in execution of a decree. The land was sold by public auction on January 23, 1929 and was knocked down to the first plaintiff for $3,400. There were then other decrees against the defendant in respect of which applications for execution had been made. On January 26, 1929 the plaintiff's solicitor submitted that it was not necessary for him to pay in the full amount of the purchase price and offered to pay enough to cover all the other claims which were entitled to rateable distribution. The Assistant Registrar agreed to this proposal and worked out the figures for distribution, taking the date of realisation as January 26, 1929. On January 29, 1929 two additional claims in respect of applications for execution against the same defendant were made. These were rejected by the Assistant Registrar. It was held that they were rightly rejected.

In my judgment the learned Senior Assistant Registrar was wrong in applying that case to the facts of the case before him. In that case the date on which the plaintiff's solicitor undertook to pay enough money to cover the claims which were then entitled to rateable distribution was taken to be the date of realisation. In the present case no assets could be said to have been realised by sale or otherwise until the money was paid into court.

In *Ramanathan Chettiar* v. *Subramania Sastrial*[2] the immovable properties of a judgment-debtor were brought to sale at the instance of one judgment-creditor in two parcels. After the proceeds of sale of the first parcel had been paid into court and before the proceeds of sale of the second parcel had been so paid in, the petitioner (also an execution-creditor) applied under section 295 of the Code of Civil Procedure for a rateable distribution. It was held that he was entitled to participate in a rateable distribution in the proceeds of sale of both parcels, the assets having been realised, within the meaning of the section, when the whole of the proceeds of the property sold in execution of the decree were paid into court, and his application having been filed prior to such realisation.

It is to be observed that in the above case the relevant date was the date on which the proceeds of sale were paid into court. That was because section 295 of the Indian Code of Civil Procedure did not provide for the relevant date in the case of sale of immovable property to be the date of sale, as stipulated in proviso (c) to rule 1(1) of our Order 46A. As I have already said earlier, it was argued before us that, on the analogy of proviso (c), the relevant date in the present case should be the date on which the order for payment into court was made and not the date of the actual payment. I do not think there is any substance in that argument, because proviso (c) makes a specific provision in the case of sale of immovable property, so that in any other cases the relevant date is the date on which the assets are realised.

Rule 1(1) of Order 46A comes from section 312 of the Civil Procedure Code (F.M.S. Cap. 7), which in turn was based on section 295 of the Indian Code of Civil Procedure, 1882 (section 73 of the Code of Civil Procedure, 1908). *Mulla's* Indian Civil Procedure Code, 10th Edition at page 260 in paragraph (b)(i) under the heading "Assets available for rateable distribution" speaks of "debts attached under section 268 (now O.21, r.46) and paid into court by the garnishee". The authority cited for that statement is the case of *Sorabji Edulji Warden* v. *Govind Ramji, F.N. Wadia and another*[3] in which the plaintiff attached certain money belonging to the defendant in the hands of the B.B. and C.I. Railway Company. Telang J. said in that case:

"There can be no question that the debt due by the railway company to Govind Ramji falls within the term "assets" — which means all a man's property of whatever kind, which may be used to satisfy debts or demands existing against him. And when that particular asset, which was at the time of the prohibitory order a mere chose in action, is by some process reduced into possession, — reduced. that is to say, to a form in which it is available for immediate application towards the satisfaction of the decree which is being executed, — it can with perfect accuracy be described as "realized". The only question, then, which remains, is whether this particular "asset" can be said to have been "realized by sale or otherwise in execution of a decree." Now, it is plain that the original prohibitory order served upon the railway

company under section 268 of the Civil Procedure Code was a process in execution of the decree, and the consent order and payment into the hands of the sheriff in pursuance of it were made under the provisions of the same section 268; a section which occurs in the Chapter on Execution of Decrees, and must be admitted to relate to matters connected with such execution. It seems to me, therefore, that all the conditions with respect to the character of the fund to be dealt with, which are prescribed for the application of section 295, are here satisfied, and the moneys in the hands of the sheriff must be deemed to be subject to the provisions contained in that section."

Kay J. in the case of *In re Oxford Benefit Building and Investment Society*(4) said that "realized profits" must be taken in its ordinary commercial sense as meaning at least "profits tangible for the purpose of division". It would seem clear therefore that "realised" means converted into cash or into form whereby it becomes available for immediate distribution. In the present case it was only on the date of payment of the money into court that there was something available for immediate distribution, so that the appellant who had lodged his claim before that date was entitled to a rateable distribution.

I would allow this appeal, setting aside the order of the Senior Assistant Registrar and making an order that he do allow the appellant's claim to rateable distribution. There will also be an order for the respondents to pay costs of this appeal.

Ong C.J. and **Ong Hock Sim F.J.** concurred.

Appeal allowed.

Solicitors: *K. L. Devaser & Co.; Mah & Kok; Shook Lin & Bok.*

TAN HEE LOCK v. COMMISSIONER FOR FEDERAL CAPITAL & ORS.; HARIS BIN IDRIS v. COMMISSIONER FOR FEDERAL CAPITAL & ORS.

[F.C. (Ong C.J., Gill and Ong Hock Sim F.JJ.) March 2, 1973]

[Kuala Lumpur — Federal Court Civil Appeals Nos. 59 and 74 of 1972]

Administrative Law — Application for certiorari — Order of Federal Capital Commissioner — Joint application for recovery of possession by landlords of adjoining premises — Rules of natural justice — Right to be heard — Bias — Control of Rent Act, 1966, s. 18A — Federal Constitution, art. 8.

These were appeals from the dismissal of applications for *certiorari* in respect of the order of the Federal Capital Commissioner made under section 18A of the Control of Rent Act, 1966. On appeal it was submitted *inter alia* (a) that as the two premises were separately owned by each of the landlords, they could not make a joint application under section 18A of the Control of Rent Act, 1966, for the recovery of separate rent-controlled premises; (b) that the order of the Federal Capital Commissioner was invalid as it contravened Article 8 of the Constitution of Malaysia, as it discriminated against certain tenants of controlled premises in the Federal Capital; (c) the order of the Commissioner was made in contravention of the rule of *audi alteram partem* and therefore wrong in law; (d) the Commissioner in adjourning the proceedings and retiring to his chambers with his advisers who sat with him in the proceedings, violated the rule which required him to act openly, impartially and fairly.

Held, dismissing the appeal: (1) the joint application of the landlords was not bad in law and the Commissioner did not in any way act without jurisdiction;

(2) Article 8 of the Federal Constitution must be read as a whole and there was no discrimination in section 18A of the Control of Rent Act, 1966, against anyone on the ground of religion, race, descent or place of birth;

(3) in dealing with the application the Commissioner did not act in violation of the rules of natural justice, because he gave counsel for the tenants an opportunity to state their case. The proceedings before him were not in the nature of a trial in a court of law, so that it was within his power to adopt whatever procedure he considered suitable in order to make such inquiries as he thought fit;

(4) in consulting with his legal adviser and the other advisers, neither of whom was a party to the application or a witness, the Commissioner was not guilty of any bias.

Cases referred to:-

(1) *Mohamed Ashraff & Anor.* v. *The Commissioner for Federal Capital, K.L. & Anor.* [1972] 2 M.L.J. 69.

(2) *R.* v. *Gaming Board, ex parte Benaim* [1970] 2 Q.B. 417, 430.

(3) *R.* v. *Birmingham City Justice, ex parte Chris Foreign Foods (Wholesalers) Ltd.* [1970] 3 All E.R. 945.

FEDERAL COURT.

A. K. J. D'Cruz (*M. A. Gomez* with him) for the appellants in Civil Appeal No. 59 of 1972.

Dato S. P. Seenivasagam for appellants in Civil Appeal No. 74 of 1972.

Chan Siew Yoon for first respondent.

N. A. Marjoribanks for second and third respondents.

Gill F.J.: These two appeals, which were heard together by consent of the parties, are appeals from the dismissal by Abdul Hamid J. of the two separate applications of the appellants for an order of *certiorari* to remove into the High Court to be quashed an order of the Federal Capital Commissioner, the first respondent, requiring them within six months from the date of the order to deliver vacant possession of the rent controlled premises of which they are the respective tenants.

The appellant in the first appeal and the two appellants in the second appeal are the tenants respectively of the adjacent premises known as No. 87 and No. 89, Jalan Tuanku Abdul Rahman, Kuala Lumpur, of which the third and second respondents respectively are the landlords.

The order sought to be quashed was made by the Commissioner under section 18A of the Control of Rent Act, 1966 on the joint application of the two landlords who, with a view to constructing a 4-storey office/shop building on the site of the two adjacent premises, had entered into an agreement in writing on October 13, 1969 to become joint owners of the two premises.

The joint application by the landlords was made on November 19, 1970. It was accompanied, as required by section 18A (1) of the Act, by —

(a) a planning permission which had been granted to them by the appropriate Planning Authority;